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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92051170
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In Re Trademark Reg. No. 2231093 )

Dated: March 9, 1999 )

Mark: O2 )

Class: INT. 9 )

O2Micro International Limited )

Petitioner )

)

v. )

)

O2 Holdings Limited )

Respondent )

Cancellation No. 92051170

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**PETITIONER'S MOTION FOR SUMMARY JUDGMENT**

## TABLE OF CONTENTS

INTRODUCTION.....	1
STATEMENT OF MATERIAL FACTS.....	1
ARGUMENT.....	4
1. Petitioner is entitled to Summary Judgment on the issue of abandonment, as there is no genuine issue of material fact as to the nonuse and naked licensing of the mark .....	1
a. There is no genuine issue of material fact that the mark was abandoned through nonuse with the intent not to resume in October 2002 .....	1
b. At the time of assignment, the registered mark had been abandoned, rendering the assignment void ab initio, such that Respondent never acquired the registration. ....	6
c. Even if the registered mark were not abandoned by SGI and the assignment were valid, Respondent engaged in naked, uncontrolled licensing of the mark resulting in a loss of trademark significance, and thus, abandonment of the registered mark .....	8
2. Petitioner is entitled to Summary Judgment on the issue of fraud on the Trademark Office.....	10
a. Registrant knowingly made false representations to the Trademark Office in its Section 8/9 renewal application.....	10
b. Respondent's specimens submitted with its Section 8/9 renewal were intentionally incomplete.....	12
c. Respondent's submission of additional specimens following initiation of the cancellation action confirms Respondent's intent to mislead.....	15
CONCLUSION.....	17

## TABLE OF AUTHORITIES

### CASES

<i>In re Bose Corporation</i> , 91 U.S.P.Q.2d (Fed.Cir. 2009).....	14
<i>Barcamerica Intern. USA Trust v. Tyfield Importers, Inc.</i> , 289 F.3d 589, 596 (9th Cir. 2002).....	8,10
<i>Cerveceria Centroamericana, S.A. v. Cerveceria India, Inc.</i> , 892 F.2d 1021, 13 U.S.P.Q.2d 1307 (Fed. Cir. 1989) .....	5
<i>Dawn Donut Co. v. Hart's Food Stores, Inc.</i> , 267 F.2d 358, 367 (2d Cir. 1959).....	9
<i>FreecycleSunnyvale v. Freecycle Network</i> , 626 F.3d 509, 515 (9th Cir. 2010).....	10
<i>Grand Canyon West Ranch LLC v Hualapai Tribe</i> , 88 U.S.P.Q.2d 1501 (T.T.A.B. 2008).....	11
<i>Haymaker Sports, Inc. v. Turian</i> , 581 F.2d 257, 198 U.S.P.Q. 610, 613 (C.C.P.A. 1978)....	8
<i>Medinol v. Neuro Vasx, Inc.</i> 67 U.S.P.Q.2d 1205 (T.T.A.B. 2003).....	14
<i>Mister Donut of America, Inc. v. Mr. Donut, Inc.</i> , 418 F.2d 838, 164 U.S.P.Q. 67 (9th Cir. 1969).....	7
<i>Money Store v. Harriscorp Finance, Inc.</i> , 689 F.2d 666, 216 U.S.P.Q. 11 (7th Cir. 1982)...	6
<i>Pilates, Inc. v. Current Concepts, Inc.</i> , 120 F. Supp. 2d 286, 57 U.S.P.Q.2d 1174 (S.D.N.Y. 2000).....	7
<i>Rivard v. Linville</i> , 133 F.3d 1446, 45 U.S.P.Q.2d 1374 (Fed. Cir. 1998). ....	5
<i>Standard Knitting Ltd. v. Toyota Jidosha Kabushiki Kaisha</i> , 77 U.S.P.Q.2d 1917 (T.T.A.B. 2006).....	11
<i>Stanfield v. Osborne Industries Inc.</i> , 52 F.3d 867, 34 U.S.P.Q.2d 1456 (10th Cir.1995).....	9
<i>Uncas Mfg. Co. v. Clark &amp; Coombs Co.</i> , 200 F. Supp. 831, 132 U.S.P.Q. 683 (D.R.I. 1962), <i>aff'd on other grounds</i> , 309 F.2d 818, 135 U.S.P.Q. 282 (1st Cir. 1962).....	7

FEDERAL STATUTES AND RULES

37 CFR 2.122(b).....2

15 U.S.C. § 1064(3).....4

15 U.S.C. §1127.....4

## **INTRODUCTION**

Petitioner, O2Micro International Limited (“O2Micro”) respectfully submits its Motion for Summary Judgment since the undisputed facts establish as a matter of law that the mark shown in U.S. Trademark Registration No. 2231093 was abandoned, and that O2 Holdings Limited (“O2 Holdings”) knowingly made material misrepresentations of fact in its Section 8/9 Application for renewal of said Registration with the intent to deceive the U.S. Trademark Office.

Since initiation of this proceeding four years ago, the parties have each filed, among other things, motions for summary judgment. The Board denied both. O2 Holdings also filed a Motion to Dismiss Petitioner’s amended Petition for Cancellation, and the motion was denied. The parties have conducted limited discovery and meanwhile have been engaged in settlement discussions. The discovery period has closed and Petitioner has served its Pretrial Disclosures. Petitioner’s trial period is set to open July 4, 2013.

## **STATEMENT OF MATERIAL FACTS**

O2Micro and O2 Holdings each own applications and registrations for their various “O2” trademarks in many countries. They are parties to trademark disputes in several countries, all involving the parties’ respective “O2” trademarks, including oppositions filed in Taiwan, Singapore, the European Community, and litigation initiated in Germany by O2 Holdings on July 16, 2009.

O2Micro has been using the marks “O2MICRO,” “O2MICRO SMART CARD ENABLED, plus design,” “O2MICRO BREATHING LIFE INTO MOBILITY, plus design,” and “O2MICRO, plus design” in connection with integrated circuits and related devices in commerce since at least as early as May of 1995.

O2 Holdings is a telecommunications company located in the UK, which provides mobile, fixed and broadband services in the UK, Ireland, Germany, the Czech Republic and Slovakia (Declaration of Fessler). O2 Holdings has filed U.S. Trademark applications for various “O2” trademarks, all of which were filed based on O2 Holdings’ home country applications or registrations under Section 44 of the Lanham Act. No use in commerce is alleged in any of O2 Holdings’ filings.

O2 Holdings’ application or registration with the earliest filing date is a registration resulting from an application filed by another entity, Silicon Graphics, Inc. (SGI). SGI executed an “Assignment of U.S. Trademark, U.S. Trademark Registration therefor, and the Goodwill Associated Therewith” dated October 29, 2007 with respect to the ‘093 Registration (Exhibit A). After execution of the assignment document, SGI became a licensee of O2 Holdings with respect to the “O2” trademark. The former SGI Registration is the subject of the present cancellation action, that is, U.S. Registration No. 2231093 (“the ‘093 Registration”) and is of record in this action pursuant to TBMP § 528.05(a); 37 CFR 2.122(b).

The ‘093 Registration covers “computer hardware and computer operating system software, and instructional manuals therefore sold as a unit therewith.” On October 29, 2007, SGI executed an assignment of the ‘093 Registration to O2 Holdings (see Answer to Petition to Cancel Registration). On March 9, 2009, O2 Holdings filed a Combined Declaration of Use in Commerce & Application for Renewal of Registration of a Mark under Sections 8 & 9 (the “Renewal Application”) with the U.S. Patent and Trademark Office and claimed current use of the mark in commerce in connection with all of the goods recited in the ‘093 Registration (see Answer to Petition to Cancel Registration).

With respect to the Renewal Application, the following allegation was set forth in Petitioner's June 29, 2009 Petition to Cancel Registration:

Said filing included image files described as "Digital image of Applicant's website showing goods and information on how to order goods" and comprising a copy of SGI's "Silicon Graphics O2 Visual Workstation" datasheet, including the copyright notice "© 2000 Silicon Graphics, Inc.," and a copy of pages at SGI's web site, particularly the page shown at [www.sgi.com/products/legacy/mips/html](http://www.sgi.com/products/legacy/mips/html) comprising photos of products that were no longer manufactured or sold, and hyperlinks to download owner's guides therefore. n.1 The page shown at [www.sgi.com/products/legacy](http://www.sgi.com/products/legacy) is the page which provides a link to the specimen page, and it includes the heading "here you will find information for products that are no longer manufactured or sold by SGI."

Thus, the user would first find this statement and then be able to link to the page which O2 Holdings submitted as a specimen of use in its Renewal Application.

In its Answer to Petition to Cancel Registration, O2 Holdings stated it "has insufficient knowledge or information upon which to form a belief concerning" the foregoing allegation.

In January, 2009, just prior to the filing of the Renewal Application, an SGI sales representative reported that the "O2" computer products had been discontinued as much as seven years earlier, were no longer available, and had been replaced with a different brand, "Fuel." (Declaration of Carol Ball).

On October 11, 2005, O2 Holdings filed a Notice of Opposition against Locus Telecommunications, Inc.'s US Trademark Application Ser. No. 78376314 for the mark "O2." In the Notice of Opposition, O2 Holdings alleged likelihood of confusion between its "O2" trademark and the opposed "O2" trademark, yet failed to assert any use of its alleged "O2" trademark in commerce (Exhibit B). The Notice of Opposition was not amended to add an allegation of use in commerce despite O2 Holdings having acquired the '093 Registration in which a claim of use in commerce has been made.

In Respondent's June 10, 2013 Responses to Petitioner's First Request for Admissions, O2 Holdings responded to Request for Admission No. 3 as follows:



**Admission No. 3:**

Admit that Respondent did not sell computer hardware and computer operating system software under the "O2" trademark in the U.S. in 2009.

**Response:**

Respondent is continuing to examine its records to determine if the "O2" trademark was used in the US during the relevant period in relation to computer hardware and computer operating system software, based on Respondent's understanding of the terms computer hardware and computer operating system software. Its records are voluminous such that at this point in time, Respondent is unable to admit or deny the request and therefor DENIES the same. Respondent will make a good faith effort (sic) to determine the extent of such use, if any.

**ARGUMENT**

**1. Petitioner is entitled to Summary Judgment on the issue of abandonment, as there is no genuine issue of material fact as to the nonuse and naked licensing of the mark.**

Trademark law provides for canceling a registration "[a]t any time if the registered mark ... has been abandoned," 15 U.S.C. § 1064(3), and defines abandonment as discontinued use with an intent not to resume, 15 U.S.C. § 1127. Additionally, naked or uncontrolled licensing can also result in the effective abandonment of a registered mark. Here, there is no genuine issue of material fact as to the abandonment of the mark by nonuse of assignor prior to assignment. Moreover, even if the registered mark were not abandoned by nonuse and invalid assignment, there is no genuine issue of material fact regarding its abandonment via years of naked, uncontrolled licensing.

**a) There is no genuine issue of material fact that the mark was abandoned through nonuse with the intent not to resume in October 2002.**

Under the Lanham Act, proof of nonuse for three years creates a presumption that the mark has been abandoned. 15 U.S.C. § 1127. Once a prima facie case of abandonment is made by the challenger's evidence of nonuse for more than the statutory time period, the burden of production shifts to the trademark registrant. In carrying this burden, the registrant must: (1)

provide evidence to disprove the underlying fact triggering the presumption: three consecutive years of nonuse; and/or (2) provide evidence of an intent to resume use to disprove the presumed fact of no intent to resume use. *Cerveceria Centroamericana, S.A. v. Cerveceria India, Inc.*, 892 F.2d 1021, 13 U.S.P.Q.2d 1307 (Fed. Cir. 1989) (on the facts, the presumption was not rebutted and the mark was held abandoned); *Rivard v. Linville*, 133 F.3d 1446, 45 U.S.P.Q.2d 1374 (Fed. Cir. 1998) (on the facts, the registrant could not rebut the presumption and the registration was cancelled for abandonment).

O2Micro has provided evidence of nonuse by O2 Holdings and its predecessor, SGI, by way of the Declaration of Carol Ball and the web sites reviewed and discussed in the Declaration of Jennifer L. Fessler and in the supplemental Declaration of Alex P. Garens, including the “Legacy Products” page on the SGI web site and archives of SGI’s Product page from 2002 to 2009. This evidence objectively and unambiguously shows that SGI ceased use of the mark O2 no later than October 2002 with the intent not to resume use.

In particular, in January of 2009, a sales representative of SGI advised that the “O2” product had been discontinued as much as seven years earlier and replaced with a product sold under a different trademark, and noted that the SGI web site listed the “O2” product as being discontinued. (See Ball Declaration). Corroborating the employee’s statement, saved archives of the SGI web site confirm that on August 13, 2002 the website listed “O2” among its products, but on October 13, 2002, the “O2” product was no longer listed or offered, nor were any other products under the “O2” trademark. (See Garens Declaration). Thus, SGI intentionally ceased use of the “O2” trademark between August 13 and October 13, 2002.

This amounts to abandonment in light of SGI’s actions confirming it had the intent not to resume use of the product or trademark. Specifically, starting at least as early as August 4, 2004,

the SGI website listed “O2” among its “Legacy Products” that “are no longer manufactured or sold by SGI.” (See Garens Declaration). Archived pages show that the SGI website continued to list the “O2” product as defunct in 2005, 2006, and 2007. Indeed, after first appearing on the list, “O2” has continuously been listed as a Legacy Product up until the commencement of this proceeding in 2009, and continues to be so listed as of the filing of this motion. (See Declaration of Fessler; Declaration of Garens).<sup>1</sup> These archived pages further corroborate the SGI sales representative’s statement that the product line was discontinued and demonstrates that SGI considered the product line defunct without the intention to resume sales or offerings of its O2 products. Further indicating that SGI had the intention not to resume use of the “O2” mark, the SGI employee stated that the “O2” products had been replaced by a different line of products under a new trademark.

Accordingly, under the statutory presumption of three years of nonuse amounting to abandonment, because SGI ceased use of the mark in commerce between August and October 2002 with intent not to resume use, as indicated by SGI’s own classification of the brand as retired and replaced, the ‘093 Registration was statutorily abandoned no later than October 2005. There being no genuine question of material fact regarding the dates of nonuse and intent not to resume use, Petitioner is entitled to Summary Judgment on the grounds of abandonment by nonuse.

**b) At the time of assignment, the registered mark had been abandoned, rendering the assignment void ab initio, such that Respondent never acquired the registration.**

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<sup>1</sup> Petitioner notes that SGI filed a Section 8 Affidavit for the ‘093 Registration on September 20, 2004 along with a specimen comprising a hardware reference manual for the discontinued “O2” product. This filing was made after the O2 products ceased to be offered in October 2002, and after SGI itself considered the product a discontinued, as listed on its “Legacy Page.” As such, this filing was either made fraudulently or under a mistaken understanding of the law. Either way, it does not change the facts that SGI ceased use in October 2002 and that SGI had the intent not to resume use, as indicated by its replacement of the “O2” brand with a new mark and its continual classification of “O2” as defunct starting in August 2004.

An abandoned trademark registration is not capable of assignment, as there is no property left to be transferred after the mark has been abandoned through nonuse. *See Money Store v. Harriscorp Finance, Inc.*, 689 F.2d 666, 216 U.S.P.Q. 11 (7th Cir. 1982) (“An abandoned trademark is not capable of assignment.”); *see, e.g., Mister Donut of America, Inc. v. Mr. Donut, Inc.*, 418 F.2d 838, 164 U.S.P.Q. 67 (9th Cir. 1969); *Uncas Mfg. Co. v. Clark & Coombs Co.*, 200 F. Supp. 831, 132 U.S.P.Q. 683 (D.R.I. 1962), *aff’d on other grounds*, 309 F.2d 818, 135 U.S.P.Q. 282 (1st Cir. 1962) (after assignor sold off tangible assets and ceased business, it sold mark to plaintiff: held an assignment in gross); *Pilates, Inc. v. Current Concepts, Inc.*, 120 F. Supp. 2d 286, 57 U.S.P.Q.2d 1174 (S.D.N.Y. 2000) (1992 assignment was in gross and invalid where the “assignor” went out of business in 1989 and had no good will to assign).

The ‘093 Registration was assigned to O2 Holdings in October 2007, approximately five years after SGI discontinued use of the trademark, and over two years after the Registration was legally abandoned in October 2005, as explained above. Moreover, the SGI website continued to indicate the O2 products were discontinued for the three years prior to the assignment. The O2 mark was long-abandoned at the time of transfer and thus did not possess any good will with which the mark could have been transferred. Accordingly, the 2007 assignment agreement purported to assign trademark rights where there were none. Because an abandoned mark cannot be assigned, the assignment agreement between SGI and O2 Holdings was void ab initio, and O2 Holdings never legally became the Registrant.

Because there is no genuine question of material fact regarding the invalidity of the assignment, Petitioner is also entitled to Summary Judgment on the grounds of abandonment by assignor such that Respondent never legally obtained ownership of any transferred rights in the ‘093 Registration.

- c) **Even if the registered mark were not abandoned by SGI and the assignment were valid, Respondent engaged in naked, uncontrolled licensing of the mark resulting in a loss of trademark significance, and thus, abandonment of the registered mark.**

It is well established that naked licensing can cause a trademark to lose its significance as a mark, such that the registration may be cancelled on the grounds of abandonment. *Haymaker Sports, Inc. v. Turian*, 581 F.2d 257, 198 U.S.P.Q. 610, 613 (C.C.P.A. 1978) (“Uncontrolled licensing of a mark results in abandonment of the mark by the licensor.”). Here, to the extent that Respondent had any valid trademark rights in the mark, it has abandoned the mark through years of completely uncontrolled, unsupervised, and unmonitored licensing.

After the October 29, 2007 assignment, which was invalid ab initio as explained above, O2 Holdings licensed the trademark back to the assignor, SGI, In its May 12, 2010 response to O2Micro’s Motion for Summary Judgment, O2 Holdings admitted that it absolved itself of any responsibility in the oversight of its licensee’s use of the mark, and to the contrary, that it was actually, SGI, rather than itself who had the burden of coming forward with information as to its use or lack of use of the mark in commerce. (Respondent’s Response to Petitioner’s Motion for Summary Judgment, at 3-4). O2 Holdings acknowledges that it did not know, and never bothered to look into, whether its licensee, SGI, may have discontinued use of the mark, and it was not until the Petition to Cancel was filed that O2 Holdings investigated its licensee’s use, thereby admitting that it did not make any effort to ensure that the mark was still in use by its licensee, much less, the nature of such use for the purposes of quality control, prior to filing its Section 8 and 9 renewal. *Id.*

As the mark holder, O2 Holdings had an affirmative duty to continuously supervise and exert control over the quality of goods offered by its licensee. *Barcamerica Intern. USA Trust v.*

*Tyfield Importers, Inc.*, 289 F.3d 589, 596 (9th Cir. 2002) (affirming dismissal on summary judgment where plaintiff licensed mark for use on wine with no quality control provision in the license and plaintiff "played no meaningful role in holding the wine to a standard of quality"). The only effective way to protect the public where a trademark is used by a licensee is to place on the licensor the affirmative duty of policing in a reasonable manner the activities of his licensee. *Dawn Donut Co. v. Hart's Food Stores, Inc.*, 267 F.2d 358, 367 (2d Cir. 1959). The fact that O2 Holdings tried to relieve itself of this affirmative duty through the license agreement by putting the burden on SGI, does not immunize it from the loss of rights by naked licensing.

To the contrary, such conduct *amounts* to naked licensing. By attempting to place affirmative oversight duties on the licensee, O2 Holdings itself indicated that it never had any intention to conduct quality control procedures or investigate its licensee's use of the mark or ensure the quality of the products which were sold under the mark. Such lack of control amounts to naked licensing, as O2 Holdings still maintained the burden of putting forth truthful statements regarding use in commerce. Such a burden requires, at a minimum, that O2 Holdings inquire with its licensee prior to filing its Declaration of Use. Indeed, Respondent's May 12, 2010 response to Petitioner's Motion for Summary Judgment admits that Respondent filed the response without any knowledge that the mark was actually in use. (See Respondent's Response to to Petitioner's Motion for Summary Judgment, page 4 ("Registrant, thus, submitted the renewal under the presumption that SGI's use was in force and supported renewal."); see also Respondent's Response to Petitioner's Requests for Admissions, *supra* page 4 (stating Respondent is not aware of any use of the mark at the time of filing). This, of course, is because Respondent actually had specific knowledge to the contrary that the mark was no longer in use by SGI, yet filed the renewal fraudulently nonetheless. (See *infra*). Here, "it is clear that the

[plaintiff] had never exercised actual control over the use of the mark, which it had a burden to do.” *Stanfield v. Osborne Industries Inc.*, 52 F.3d 867, 34 U.S.P.Q.2d 1456 (10th Cir.1995) (granting summary judgment where license agreement lacked supervision provisions and licensor actually failed to exercise control or supervision).

Beyond attempting to divest itself of its oversight responsibilities as licensor in the license agreement, O2 Holdings’ admitted failure to actually exercise any supervision or control measures over its licensee’s use of the mark further amounts to naked licensing (See Registrant’s Response to Petitioner’s Motion for Summary Judgment, at 4.) “It is well established that where a trademark owner engages in naked licensing, without any control over the quality of goods produced by the licensee, such a practice is inherently deceptive and constitutes abandonment of any rights to the trademark by the licensor.” *Barcamerica Intern. USA Trust*, 289 F.3d at 596 (9th Cir. 2002). In such circumstances, it is appropriate for the trademark registration to be cancelled. *Id.*, citing *McCarthy on Trademarks* §18:48 (“[U]ncontrolled and ‘naked’ licensing can result in such a loss of significance of a trademark that a federal registration should be cancelled.”); see, e.g., *FreecycleSunnyvale v. Freecycle Network*, 626 F.3d 509, 515 (9th Cir. 2010) (granting summary judgment based on a finding of naked licensing and abandonment where licensor did not retain express contractual control over trademark use or exercise actual control).

Based on the foregoing, O2Micro submits that there are no disputed material facts with respect to: the nonuse of the subject trademark for at least the statutory period; the intent not to resume use during that period; the invalidity of the assignment; the Respondent’s naked licensing of the mark; and that Respondent, itself, has never used the mark shown in the ‘093 Registration

for the goods identified therein in commerce in the US. Accordingly, O2Micro requests that its motion for summary judgment on the issue of abandonment be granted.

**2. Petitioner is entitled to Summary Judgment on the issue of fraud on the Trademark Office**

**a) Respondent knowingly made false representations to the Trademark Office in its Section 8/9 renewal Application**

This is a case where a non-U.S. company seeks to gain and maintain trademark rights in the U.S. without using its trademark in commerce. While reliance on Section 44 of the Lanham Act will temporarily result in such rights, taking an assignment of a third party registration for an abandoned trademark, and submitting a false declaration of current use, do not.

“The US Trademark Office depends on the accuracy of information provided by applicants and registrants regarding an applicant’s or registrant’s goods and services [as it] has no ability to verify the truth of identifications and other critical information independently.” *Grand Canyon West Ranch LLC v Hualapai Tribe*, 88 U.S.P.Q.2d 1501 (T.T.A.B. 2008). *See also, Standard Knitting Ltd. v. Toyota Jidosha Kabushiki Kaisha*, 77 U.S.P.Q.2d 1917, 1928 (T.T.A.B. 2006) (the PTO “relies on the thoroughness, accuracy and honesty of each applicant [because it] does not inquire as to the use of the mark on each good listed ... relying on applicant’s declaration”). Thus, imposing a duty on applicants to ensure the accuracy of their applications protects the integrity of the trademark registry and ensures it will not be tainted with false statements of use, which affect all trademark owners and applicants.

Here, notwithstanding knowledge to the contrary, O2 Holdings declared, under penalty of perjury, to be using a trademark in commerce for goods which it did not sell, in a field of business in which O2 Holdings is not a participant anywhere in the world, most significantly, not



in the United States (Declaration of Fessler), and for goods which its predecessor in interest had not sold under the mark for many years. Simply stated, when O2 Holdings filed its Renewal Application, there was no reasonable basis for a claim that O2 Holdings was using the “O2” mark in commerce connection with “computer hardware and computer operating system software, and instructional manuals therefore sold as a unit therewith,” and no reasonable basis for a claim that O2 Holdings was unaware of that fact, but instead knowingly and intentionally misled the U.S. Trademark Office on this material fact resulting in renewal of the ‘093 registration.

**b) Respondent’s specimens submitted with its Section 8/9 renewal were intentionally incomplete**

SGI discontinued the sale of “O2” branded products and abandoned its “O2” trademark for “computer hardware and computer operating system software, and instructional manuals therefore sold as a unit therewith” years before executing an assignment of the ‘093 Registration to O2 Holdings in 2007 (Declaration of Ball). SGI’s discontinuance of sales of “O2” branded products occurred as much as seven years prior to O2 Holdings’ filing of the Renewal Application (Declaration of Ball). Nevertheless, O2 Holdings submitted a specimen of use showing an image of the discontinued product, and submitted a declaration that the mark was in use in commerce in connection with such goods. The specimen comprises a 2002 “Data Sheet” and pages from the SGI web site (O2 Holdings’ alleged licensee) on which discontinued products are shown and from which user manuals for the discontinued products are available for download. The web page that appeared prior to the page on which discontinued products are shown is a page that explains that the products, identified as “Legacy Products,” are discontinued (See Exhibit A to the Declaration of Fessler and Declaration of Ball). The specimen that O2 Holdings submitted with its Renewal Application did not include this “Legacy Products” page.

In deciding to omit this page, O2 Holdings avoided making of record the fact that the “O2” system was actually no longer available at the time of the Renewal Application.

O2 Holdings stated in its July 26, 2010 Motion to Dismiss that “Registrant received no communications from SGI prior to commencement of the time period for renewal of Registrant’s Mark that SGI had stopped making and selling O2 products. Registrant, thus submitted the renewal under the presumption that SGI’s use was in force and supported renewal.” (Motion to Dismiss, p. 5).

The “time period for renewal of Registrant’s Mark” ran from March 9, 2008 to March 9, 2009 (based on a Registration date of March 9, 1999). O2 Holdings filed its Renewal Application on March 9, 2009. Accordingly, O2 Holdings had no communication with its purported licensee, SGI, regarding use of the trademark for at least a year, yet proceeded to file a declaration of use stating it was using the O2 trademark.

Furthermore, not having heard from its licensee regarding use of the trademark, it follows that O2 Holdings had to obtain a specimen of use on its own. In order to reach the pages that were submitted as a specimen of use, O2 Holdings would have first come to the “Legacy Products” page as discussed above, which explicitly informs the visitor that such products “are no longer manufactured or sold by SGI.” Thus, O2 Holdings was well aware of the fact that the pages following the “Legacy Products” page showed discontinued products.

The products and services offered by O2 Holdings itself anywhere in the world under the “O2” trademark do not include “computer hardware and computer operating system software, and instructional manuals therefore sold as a unit therewith.” (Declaration of Fessler). Neither SGI nor O2 Holdings sell such goods in the United States under the “O2” trademark and O2 Holdings was well aware of that fact when it filed the Renewal Application. Because the ‘093

registration was the only non-Section 44 registration owned by O2 Holdings, that is, the only one in which a claim of use in commerce had been made, it would follow that careful attention to the nature and extent of such use would be made both with respect to the SGI license and the Renewal Application.

In addition, the specimen submitted with O2 Holdings' renewal application would alert one, particularly a sophisticated company, of a need to investigate further. The specimen comprises a data sheet with a copyright notice dated 2000, and web page printouts identifying "Legacy Products" which are described on the SGI website as depicting discontinued products. The specimens obviously show a product that is, at best, outdated, and at least suspiciously old enough to warrant investigation. Again, O2 Holdings not having investigated the currentness of the specimens when it saw the old copyright notice, and the discontinued products category of the web site, and omitting the "Legacy Products" page from its specimen, shows knowledge to the extent there was an intent to deceive the Trademark Office.

As recently held by the Court of Appeals for the Federal Circuit, "a trademark is obtained fraudulently under the Lanham Act only if the applicant or registrant knowingly makes a false, material representation with the intent to deceive the PTO." *In re Bose Corporation*, 91 U.S.P.Q.2d 1938 (Fed.Cir. 2009). The CAFC also acknowledged in *Bose* that although it is the registrant's subjective intent that must be determined, that "intent must often be inferred from the circumstances and related statement made." *In re Bose, citing Medinol v. Neuro Vaxx, Inc.*, 67 U.S.P.Q.2d 1205, 1209 (T.T.A.B. 2003).

In the present case, the circumstances are as follows:

- O2 Holdings is not in the business of manufacturing or marketing "computer hardware and computer operating system software, and instructional manuals therefore sold as a unit therewith," and it would be unreasonable to assume O2 Holdings is not aware of this;

- O2 Holdings acquired a US Trademark Registration for an abandoned mark covering “computer hardware and computer operating system software, and instructional manuals therefore sold as a unit therewith;”
- O2 Holdings failed to allege prior rights in the US in its own trademark opposition against a third party “O2” trademark application, even after it acquired the ‘093 Registration;
- O2 Holdings has stated it had no contact with its licensee as much as a year before filing a declaration attesting to current use of the “O2” trademark and had to have obtained specimens comprising its licensee’s web pages on its own, thus being made aware of the fact that the products had been discontinued; and
- As recently as one month ago, O2 Holdings stated it is uncertain about whether it used the “O2” trademark in commerce at the time the Renewal Application was filed, despite being aware of Petitioner’s allegation of fraud for four years.

These circumstances can be interpreted only one way: O2 Holdings knowingly and intentionally made false material representations to the US Trademark Office in its Renewal Application.

**c) Respondent’s submission of additional specimens following initiation of the cancellation action confirms Respondent’s intent to mislead**

The record for the ‘093 Registration, and the parties’ submissions with respect to Petitioner’s Motion to Strike Affirmative Defenses, show that after the Petition was filed, O2 Holdings submitted to the U.S. Trademark Office, by letter dated September 8, 2009, a “declaration and a substitute/additional specimen” in connection with the ‘093 Registration. The submission purports to include a specimen of use comprising “digital photographs of computer hardware onto which operating system software is downloaded for use in electronic telecommunications devices which bear the subject mark.” In fact, the specimen comprises an image of a telephone “SIM card” with a memory chip for use in connection with telecommunications services in the United Kingdom. If O2 Holdings believed its Renewal

Application was defensible, it would have no reason to submit an “additional/substitute” specimen at any time, particularly not after the Petition to Cancel was filed.

Furthermore, a “SIM” (Subscriber Identity Module) card is used to identify and authenticate subscribers on mobile technological devices; thus it does not, and indeed cannot have “operating system software” downloaded onto it. Even if it could, O2 Holdings does not sell the “hardware,” but sells the telecommunications services (in the United Kingdom) that are paid for or accessed via the user of the card.

In addition, the declaration included in the September 8, 2009 submission by O2 Holdings indicates that “instructional manuals therefore sold as a unit therewith” should be deleted from the registration. Such goods were included in the declaration filed with the Renewal Application and the declaration stated that such goods were sold in commerce under the “O2” trademark. O2 Holdings cannot now seek to simply amend its registration in an effort to somehow “cure” its Renewal Application. Accordingly, even if the “additional/substitute” specimen were relevant, or could somehow “cure” the deficiencies in the Renewal Application, its filing and the related declaration do not support a claim that O2 Holdings is using the “O2” trademark in commerce in the United States in connection with computer hardware and operating system software. Instead, this submission further supports the position that the Renewal Application comprised knowingly false material representations.

O2Micro submits that there are no disputed material facts with respect to O2 Holdings having made a knowingly false, material representation with the intent to deceive the U.S. Trademark Office when it filed its Renewal Application. Accordingly, O2Micro respectfully requests that its motion for summary judgment on this issue be granted.

### **CONCLUSION**

Petitioner, O2Micro, respectfully requests that the Board GRANT Petitioner's Motion for Summary Judgment and grant such other further relief as it deems appropriate.

O2Micro International Limited

Dated: July 3, 2013

By: /s/Teresa C. Tucker  
Teresa C. Tucker  
Alex P. Garens  
Attorneys for Petitioner  
Grossman, Tucker, Perreault & Pfleger, PLLC  
55 S. Commercial Street  
Manchester, NH 03101  
603-668-6560  
Email ttucker@gtp.com

### **CERTIFICATE OF SERVICE**

It is hereby certified that a true and complete copy of the subject PETITIONER'S MOTION FOR SUMMARY JUDGMENT was served upon the Respondent via email, this 3rd day of July, 2013 to the following address:

s.baker@br-tmlaw.com

By: /s/Teresa C. Tucker  
Teresa C. Tucker

## **EXHIBIT A**

ASSIGNMENT OF U.S. TRADEMARK,  
U.S. TRADEMARK REGISTRATION THEREFOR, AND  
THE GOODWILL ASSOCIATED THEREWITH

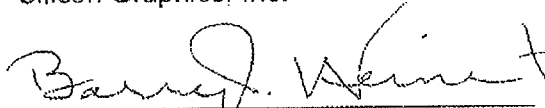
WHEREAS, Silicon Graphics, Inc., a corporation organized under the laws of the State of Delaware, located and doing business at 1140 E. Arques Avenue, Sunnyvale, California 94085, has adopted, used and is using the mark O2 which is registered in the U.S. Patent and Trademark Office as follows:

<u>MARK</u>	<u>REG. NO.</u>	<u>ISSUE DATE</u>
O2	2231093	March 9, 1999

WHEREAS, O2 Holdings Limited, a corporation organized under the laws of the United Kingdom, located and doing business at Wellington Street, Slough, Berkshire SL 1 1YP, United Kingdom, is desirous of acquiring said mark, the registration therefor and the goodwill association therewith and;

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, Silicon Graphics, Inc., Inc. does hereby assign unto O2 Holdings Limited, all right, title and interest in and to said mark, the registration therefor, and the goodwill association therewith.

Silicon Graphics, Inc.



Name: Barry J. Weinert

Title: Vice President and Secretary

Dated: October 29, 2007



## **EXHIBIT B**

ESTTA Tracking number: **ESTTA48034**

Filing date: **10/11/2005**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

### Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

#### Opposer Information

<b>Name</b>	O2 Holdings Limited
<b>Granted to Date of previous extension</b>	10/12/2005
<b>Address</b>	Wellington StreetSlough Berkshire, SL1 1YP UNITED KINGDOM

<b>Correspondence information</b>	Stephen L. Baker Lawyer Baker and Rannells PA 626 North Thompson street Raritan, NJ 08869 UNITED STATES s.baker@br-tmlaw.com,a.korar@br-tmlaw.com,n.friedman@br-tmlaw.com,j.stobbs@boulton.com Phone:908 722 5640
-----------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

#### Applicant Information

<b>Application No</b>	78376314	<b>Publication date</b>	06/14/2005
<b>Opposition Filing Date</b>	10/11/2005	<b>Opposition Period Ends</b>	10/12/2005
<b>Applicant</b>	Locus Telecommunications, Inc.		

	111 Sylvan Avenue Englewood Cliffs, NJ 07632 UNITED STATES
--	------------------------------------------------------------------

### **Goods/Services Affected by Opposition**

Class 016. All goods and services in the class are opposed, namely: Prepaid telephone calling cards, not magnetically encoded
Class 038. All goods and services in the class are opposed, namely: Prepaid wireless telephone services; telephone services provided via prepaid telephone calling cards

<b>Attachments</b>	02 opposition.pdf ( 2 pages )
--------------------	-------------------------------

<b>Signature</b>	/Stephen L. Baker/
<b>Name</b>	Stephen L. Baker
<b>Date</b>	10/11/2005

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

-----X  
O2 Holdings Limited

Opposer

Mark: O2

v.

Serial No.: 78376314

Locus Telecommunications, Inc.

Filed: March 31, 2004

Applicant

-----X

NOTICE OF OPPOSITION  
PURSUANT TO 15 U.S.C. SECTION 1063

In the matter of trademark application Serial No. 78376314 filed by Applicant, Locus Telecommunications, Inc. ("Applicant"), for O2 (the "Applicant's Mark") as a trademark for: Class 16 - Prepaid telephone calling cards, not magnetically encoded; and Class 38 - Prepaid wireless telephone services; telephone services provided via prepaid telephone calling cards ("Applicant's Goods"), published for opposition in the Official Gazette of June 14, 2005, at TM 196, the time to oppose having been extended Opposer, O2 Holdings Limited, a corporation organized and existing under the laws of the United Kingdom and located and doing business Wellington Street, Slough, Berkshire, SL1 1YP, believes that it will be damaged by the registration of the alleged mark shown in Application Serial No. 78376314 and opposes the registration under the provisions of 15 U.S.C. §1063 (Trademark Act of 1946, Section 13).

As grounds of opposition, it is alleged that:

1. Opposer is the owner of the mark O2 (stylized), and variations thereof ("Opposer's Mark") as a trademark, trade name, and as a service mark as applied to a wide range of goods and services directed to wholesale and retail consumers, including telecommunication services and related goods and services (the "Opposer's Goods").

2. Opposer is now and has been, for long prior to any date which may be claimed by Applicant, engaged in the use Opposer's Mark for Opposer's Goods.

3. Upon information and belief, applications filed on behalf of Opposer to register Opposer's Mark and assigned Ser. Nos. 78618164 and 78618311 will be rejected by the P.T.O. on the grounds that the mark of Applicant (Opposer herein), so resembles the mark shown in the application being opposed herein for Applicant's Goods, as shown in Ser. No. 78376314 as to be likely to cause confusion, or to cause mistake, or to deceive [Section 2(d) of the Trademark Act of 1946, 15 U.S.C. §1052 (d)].

4. The issuance of a registration to Applicant will create a serious cloud on Opposer's continued right to use Opposer's Mark, alone or in combination, for the goods set forth in its application.

5. Opposer believes that it is and will be damaged by registration of the mark applied by Applicant.

WHEREFORE, Opposer prays that the application for registration of O2, Serial No. 78376314, filed on March 31, 2004, be denied and that this Opposition be sustained.

Respectfully submitted for  
Opposer O2 Holdings Limited

By:

  
\_\_\_\_\_  
Stephen L. Baker  
BAKER & RANNELLS  
626 North Thompson Street  
Raritan, NJ 08869  
(908) 722-5640

Dated: October 11, 2005

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In Re Trademark Reg. No. 2231093 )  
Dated: March 9, 1999 )  
Mark: O2 )  
Class: INT. 9 )

O2Micro International Limited )  
Petitioner ) Cancellation No. 92051170  
v. )  
O2 Holdings Limited )  
Respondent )  
\*  
\_\_\_\_\_

**DECLARATION OF CAROL BALL**

I, Carol Ball, pursuant to 28 U.S.C. §1746, declare as follows:

1. I am over the age of 18 years and am fully competent to make this declaration. I make the following statements based on personal knowledge and if called to testify to them could and would do so.
2. I am authorized to provide this affidavit as a former employee of National Trademark Investigations.
3. I was employed at National Trademark Investigations as investigator during the time in which I conducted the investigation discussed in this Declaration. One of my tasks was to conduct investigations for our clients as to whether a certain trademark has been used in such a way as to preserve the rights conferred.
4. My contact address is 12405 Venice Blvd., #338, Los Angeles, CA 90066.
5. In the framework of my investigations my assignment was to find out as to whether Silicon Graphics, Inc. were using the trademark "O2" for their goods in the course of commerce. We searched the subject's website at [www.sgi.com](http://www.sgi.com) and found the O2 listed under the Products and then Legacy and the MIPS® Based Systems (MIPS is the acronym for Microprocessor without Interlocked Pipeline Stages). Included are Owner's Guides and Documents for two O2 products. The Legacy page, a portion of which is

shown below, states the listed products are no longer being manufactured or sold by Silicon Graphics:

<http://www.sgi.com/products/legacy>

## Legacy Products

Here you will find information for products that are no longer manufactured or sold by SGI. For information on current SGI products, please visit the Products section. Non-current products may be available through the Remarketed Products Group.

Support information for legacy products can be found in the Support and Downloads section. Additional documentation can be found in the Technical Publications library.

6. Having convinced myself using the Internet, including the website of Silicon Graphics, Inc. ("www.sgi.com") that Silicon Graphics, Inc. did not offer a product under the designation "O2", I called Silicon Graphics, Inc. in January 2009 at the phone number 408-524-1980. The call was taken by an employee of Silicon Graphics, Inc. by replying "Silicon Graphics". My inquiry as for "O2" was directed to one Mr. Mark Simpkins. He could not be reached personally and I left a message on his answering machine. As he had not replied to my call, I left another message at some later time.
7. I then received an email from one Shelly Zavoral, the sales representative at Silicon Graphics, Inc. for the Western part of the United States. I then tried to reach Shelly Zavoral by phone and left a message.
8. In a telephone conversation with Shelly Zavoral on January 29, 2009, she told me that Silicon Graphics, Inc. no longer has any products with the designation "O2" in stock. Shelly Zavoral told me that a product with the designation "Fuel" had replaced the earlier product "O2" and that Silicon Graphics, Inc. no longer sells any "O2" products.
9. I asked Shelly Zavoral when the product "O2" had been discontinued and she replied "Oh gosh, years and years ago". I asked how many years ago and she said "Maybe seven years ago". When I later asked her for confirmation that "O2" had been discontinued seven years ago, Shelly Zavoral replied "Maybe longer".
10. I asked once more whether "O2" products were still available and Shelly Zavoral replied, "We have zero inventory".
11. I declare under penalty being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001.

Carol Ball  
Carol Ball

Date: July 2, 2013

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In Re Trademark Reg. No.	2231093	)	
Dated:	March 9, 1999	)	
Mark:	O2	)	
Class:	INT. 9	)	
O2Micro International Limited	)		
Petitioner	)		Cancellation No. 92051170
	)		
v.	)		
	)		
O2 Holdings Limited	)		
Respondent	)		

---

**DECLARATION OF JENNIFER L. FESSLER**

I, Jennifer L. Fessler, pursuant to 28 U.S.C. §1746, declare as follows:

1. I am over the age of 18 years and am fully competent to make this declaration. I make this declaration in support of O2Micro International Limited's ("O2 Micro") Motion for Summary Judgment. I make the following statements based on personal knowledge and if called to testify to them could and would do so.
2. I am an Associate with the law firm of Grossman, Tucker, Perreault & Pfleger, PLLC of 55 S. Commercial Street, Manchester, New Hampshire 03101.
3. On June 25, 2009 I logged onto the internet using the "Internet Explorer®" browser product of Microsoft® and entered the webpage address or "url"



<http://www.sgi.com/products/legacy/> and printed a copy of the web site page accessed thereby.

4. Attached hereto as Exhibit A is a true and correct copy of the web site page accessed on the internet by the url <http://www.sgi.com/products/legacy/>.
5. I have this day logged on to the internet using the using the “Internet Explorer®” product of Microsoft® and searched the websites of O2 Holdings, at the urls <http://www.o2.com/> and <http://www.o2.co.uk/>, and the website of its parent company Telefonica S.A., at the url <http://www.telefonica.com/en/home/jsp/home.jsp>. I have carefully reviewed said websites and have found nothing to indicate or suggest that “O2” brand products or services are being offered for sale in the United States by these companies.
6. On November 13, 2008 I logged onto the internet using the “Internet Explorer®” browser product of Microsoft® and entered the webpage address or “url” [www.google.com](http://www.google.com) and conducted a web search for the term “o2 holdings telefonica united states” and followed the first search result url hyperlink [www.telefonicaeuropeday.com/where-we-operate.html](http://www.telefonicaeuropeday.com/where-we-operate.html) and printed a copy of the web site page accessed thereby.
7. Attached hereto as Exhibit B is a true and correct copy of the web site page accessed on the internet by the url [www.telefonicaeuropeday.com/where-we-operate.html](http://www.telefonicaeuropeday.com/where-we-operate.html).
8. On November 24, 2008 I logged onto the internet using the “Internet Explorer®” browser product of Microsoft® and entered the webpage address or “url” <http://www.telefonica.es/accionistaseinversores/ing/html/informaciongrupo/presencia.shtml> and printed a copy of the web site page accessed thereby.

9. Attached hereto as Exhibit C is a true and correct copy of the web site page accessed on the internet by the url  
<http://www.telefonica.es/accionistaseinversores/ing/html/informaciongrupo/presencia.shtml>.
10. On November 24, 2008 I logged onto the internet using the “Internet Explorer®” browser product of Microsoft® and entered the webpage address or “url”  
[http://www.telefonica.com/es/shareholders\\_investors/html/informaciongrupo/estadosunidos.shtml](http://www.telefonica.com/es/shareholders_investors/html/informaciongrupo/estadosunidos.shtml) and printed a copy of the web site page accessed thereby.
11. Attached hereto as Exhibit D is a true and correct copy of the web site page accessed on the internet by the url  
[http://www.telefonica.com/es/shareholders\\_investors/html/informaciongrupo/estadosunidos.shtml](http://www.telefonica.com/es/shareholders_investors/html/informaciongrupo/estadosunidos.shtml).
12. On November 2, 2009 I logged onto the internet using the “Internet Explorer®” browser product of Microsoft® and entered the webpage address or “url”  
[http://www.telefonica.com/en/telefonica\\_brands/at\\_identidad\\_marcas\\_o2.shtml](http://www.telefonica.com/en/telefonica_brands/at_identidad_marcas_o2.shtml) and printed a copy of the web site page accessed thereby.
13. Attached hereto as Exhibit E is a true and correct copy of the web site page accessed on the internet by the url  
[http://www.telefonica.com/en/telefonica\\_brands/at\\_identidad\\_marcas\\_o2.shtml](http://www.telefonica.com/en/telefonica_brands/at_identidad_marcas_o2.shtml).
14. On November 2, 2009 I logged onto the internet using the “Internet Explorer®” browser product of Microsoft® and entered the webpage address or “url”

[http://www.o2.com/about\\_us.asp](http://www.o2.com/about_us.asp) and printed a copy of the web site page accessed thereby.

15. Attached hereto as Exhibit F is a true and correct copy of the web site page accessed on the internet by the url [http://www.o2.com/about\\_us.asp](http://www.o2.com/about_us.asp).
16. I have reviewed the websites show in Exhibits B thru F and have found nothing to indicate or suggest the "O2" branded products or services are being offered for sale in the United States by these companies.

I declare under penalty of perjury of the laws of the United States of America that the foregoing statements are true and correct to the best of my knowledge.

Executed on November 4, 2009.

  
\_\_\_\_\_  
Jennifer L. Fessler

# **EXHIBIT A**

[Products](#)[Solutions](#)[Partners](#)[Support](#)[News](#)[About Us](#)[Worldwide](#)[Ready to buy? Contact Sales >>](#)[Products & Services](#)[Legacy Products](#)[Intel Based Systems](#)[MIPS Based Systems](#)[Displays](#)

## Legacy Products

Here you will find information for products that are no longer manufactured or sold by SGI. For information on current SGI products, please visit the Products section. Non-current products may be available through the Remarketed Products Group.

Support information for legacy products can be found in the Support and Downloads section. Additional documentation can be found in the Technical Publications library.

### Intel® Based Systems

- Silicon Graphics® 320
- Silicon Graphics® 540
- Silicon Graphics® 230
- Silicon Graphics® 330
- Silicon Graphics® 550
- Silicon Graphics® 750
- Silicon Graphics Zx10™
- Silicon Graphics Zx10™ VE
- SGI Zx10™ Server
- SGI® 1100
- SGI® 1200
- SGI® 1400
- SGI® 1450
- SGI Graphics Cluster™
- Silicon Graphics Prism® Deskside

### MIPS® Based Systems

- IRIS Indigo®
- Indy®
- Indigo2™
- Indigo2 Impact™
- Challenge®
- Silicon Graphics® O2®
- Silicon Graphics® O2+™
- Silicon Graphics® Octane®
- Silicon Graphics® Octane2™
- Silicon Graphics® Onyx®
- Silicon Graphics® Onyx2®
- SGI® Onyx® 300
- SGI® Origin 200®
- SGI® Origin® 2000
- SGI® Origin® 300

### Displays

- Silicon Graphics® 1600SW
- Silicon Graphics MultiLink™ Adapter
- Silicon Graphics® F180
- Silicon Graphics® F181
- Silicon Graphics® F190
- Silicon Graphics® F220
- Silicon Graphics® F230
- SGI® Reality Center® 3300W

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# **EXHIBIT B**

This is Google's cache of <http://www.telefonicaeuropeday.com/where-we-operate.html>. It is a snapshot of the page as it appeared on Oct 18, 2008 21:22:11 GMT. The current page could have changed in the meantime. [Learn more](#)

These search terms are highlighted: **o2 telefonica united states** These terms only [Text-only version](#)  
appear in links pointing to this page: **holdings**

## About Telefónica > Where we operate

The geographical balance of our business, combined with the convergence of services and technologies, explains the organisational structure based on three geographical regions: Spain, Europe and Latin America.

With a global customer base of more than 245 million, Telefónica is the world's largest integrated operator by customer accesses.

Telefónica is the leader in the Latin America telecommunications market, and also enjoys a significant footprint in Europe.

In Europe, we are present in nine, key European markets. Where our 89,000 employees provide fixed, mobile and broadband services to our 90 million customers.

### Telefónica España

Our core activity is the exploitation of fixed and mobile telephony and broadband in Spain.

Telefónica España continues to drive market growth, consolidating its competitive positioning. At the end of June 2008, Telefónica España managed 47 million accesses, a year-on-year increase of 3.9%, boosted by the 5.1% year-on-year growth in wireless customers to over 23.2 million and 18.3% growth in retail internet broadband accesses to over 5 million in the wireline business.

Telefónica España uses movistar as its commercial brand, in Spain.

### Telefónica Europe

Telefónica Europe is a business division of Telefónica comprising mobile, fixed, and DSL operations in the UK, Ireland, the Isle of Man, Germany, the Czech Republic, and Slovakia. With the exception of Isle of Man, all the operating businesses use 'O2' as their consumer brand.

Telefónica Europe also has 50% ownership of the UK and Irish Tesco Mobile and German Tchibo Mobilfunk joint venture businesses. Telefónica Europe is headquartered in Slough, UK, and has 43 million mobile and fixed customers.

### Telefónica Latinoamérica

Our main activity is the exploitation of fixed, mobile and broadband services in Latin America, where it has achieved a presence in all of the key markets.

In the second quarter of 2008, Telefónica registered a solid growth in customer accesses managed in Latin America to 147.7 million, thanks to the strong growth in mobile telephony, with a year-on-year increase of 21.4%, reaching nearly 113.5 million mobile accesses, and the sustained increase in broadband accesses exceeding 5.5 million, driven by the commercial effort made by all operators.

It offers services in Argentina, Brazil, Chile, Colombia, Ecuador, El Salvador, **United States**, Guatemala, Mexico, Nicaragua, Panama, Peru, Puerto Rico, Uruguay and Venezuela. It also runs the Telefónica office in China and the alliance with China Netcom.

Telefónica's commercial brands in Latin America comprise movistar and terra.

## Alliances

Telefónica is widening its horizons for growth through strategic and industrial alliances.

The company owns a 7.2%\* stake in China Netcom. In a country of 1,300 million inhabitants - there is huge growth potential for the ICT sector. China Netcom achieved 131 million accesses as of March 2008. In terms of forecast, it's expected that 21% of worldwide telecom revenues growth will be generated in China, between 2007-2010\*\*.

Telefónica, through joining forces with Telecom Italia, is part of the largest telecom alliance in Europe with a 19% market share.

Telefónica is also the second largest shareholder of Portugal Telecom with a 9.6% holding.

\* 2.2% pending of regulatory approval. Additionally, **Telefonica** announced last 4th of September the acquisition of a 5.74% of China Netcom (the total stake would represent a 5.5% of the new China Unicom after its merger with China Netcom).

\*\* Yankee Group Forecast, October 2007.



# **EXHIBIT C**

## ***Shareholders and Investors Telefónica S.A.***

### **⇒ *Country operations***

#### **└ Europe**

- |                  |                  |
|------------------|------------------|
| • Austria        | • Italy          |
| • Belgium        | • Poland         |
| • Czech Republic | • Portugal       |
| • Denmark        | • Spain          |
| • France         | • Sweden         |
| • Germany        | • Switzerland    |
| • Netherlands    | • United Kingdom |
| • Ireland        |                  |

#### **└ America**

- |                      |                 |
|----------------------|-----------------|
| • Argentina          | • Honduras      |
| • Brazil             | • Mexico        |
| • Canada             | • Nicaragua     |
| • Chile              | • Panama        |
| • Colombia           | • Peru          |
| • Costa-Rica         | • Puerto Rico   |
| • Dominican Republic | • United States |
| • Ecuador            | • Uruguay       |
| • El Salvador        | • Venezuela     |
| • Guatemala          |                 |

#### **└ other**

- Australia
- Morocco
- Southafrica

# **EXHIBIT D**

## ***Shareholders and Investors*** ***Telefónica S.A.***

### ***→ Country operations***

[← Back](#)

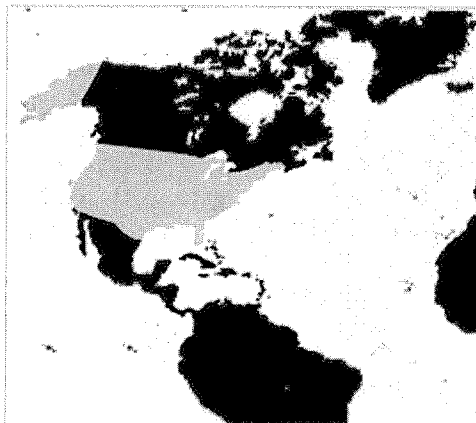
#### **▴ United States**

Telefónica operates in United States through the following companies:

Telefónica Contenidos

Telefónica Empresas

Terra Networks



#### **PRESENCE IN OTHER LATIN AMERICAN COUNTRIES**

Argentina | Brazil | Canada | Chile | Colombia | Costa Rica | Dominican Republic  
Ecuador | El Salvador | Guatemala | Honduras | Mexico | Nicaragua | Panama | Peru  
Puerto Rico | Uruguay | Venezuela

[← Back](#)

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# **EXHIBIT E**



# Our Commercial Brands

O2 is the commercial brand that provides mobile, fixed and broadband services in the UK, Ireland, Germany, the Czech Republic and Slovakia.

## **O2 brand**

O2 brand is much more than just a logo and some bubbles. It's a promise, a set of highly cherished values, and an inspiration. At the same time, it's a source of competitive advantage and shareholder value.

With O2 anything's possible. We've a fresh and enthusiastic outlook, and we constantly seek new and innovative ideas. In an increasingly complex and cluttered market, we're open and clear. We create the time and space for people to breathe. We bring a breath of fresh air to everything we do. We don't ask why, we ask why not.

## **Our approach and values**

Our approach is to put customer experience at the heart of everything we do. To be a breath of fresh air

Our values help define our brand

- **Bold**  
We take a dynamic approach to everything we do and say.
- **Open**  
We make space for fresh thinking.
- **Trusted**  
We do what we can to help our customers.
- **Clear**  
We make sure we talk to our customers simple.

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# **EXHIBIT F**





[Home sites](#) [Accessibility](#) [Sitemap](#) [O2](#)

A *Telefónica* company

[About O2](#)

[Media centre](#)

[Investor centre](#)

[O2 in society](#)

[O2 services](#)

[Working with us](#)

[Contact us](#)

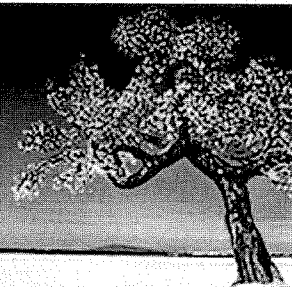
**You are here:** [About O2](#)

**Search O2**

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[Joining forces with Telefónica](#)  
[Activity highlights](#)  
[Sponsorships](#)  
[Corporate governance](#)  
[Board of directors](#)  
[Our locations](#)  
[Customer service](#)

## About O2

We are a pan-European telecommunications company operating in the UK, Germany, the Czech Republic, and Slovakia.



### Our businesses

Building on the O2 brand, the company aims to become the communications provider of choice through a commitment to offering high quality products and services as well as leading customer retention and loyalty programmes.

**Find out more about our businesses**



[Transcript for 'We're better, connected' video](#)

[Download flash](#)

### What's new?

Through music sponsorships, we aim to create deeper and more emotional connections with our customers. We use our products and services to enhance and make our sponsorship of music truly interactive, as well as, create exclusive music content. Our O2 arenas, across Europe, help us to achieve this.

**O2 sponsorships**



### **Introducing the Palm Pre**

Introducing Palm Pre, a phone that's in sync with your life. Bringing your calendars and contacts together; it notifies you of updates and messages; helping to find what you're searching for.



### **iPhone 3G S**

The fastest, most powerful iPhone yet. Latest news and updates.



### **Telefónica - Spirit of Progress**

Telefónica profile and strategy - September 2009

[Accessibility](#) | [Sitemap](#) | [Contact us](#)

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In Re Trademark Reg. No.	2231093	)	
Dated:	March 9, 1999	)	
Mark:	O2	)	
Class:	INT. 9	)	
O2Micro International Limited	)		
Petitioner	)		Cancellation No. 92051170
	)		
v.	)		
	)		
O2 Holdings Limited	)		
Respondent	)		

---

**DECLARATION OF ALEX P. GARENS**

I, Alex P. Garens, pursuant to 28 U.S.C. §1746, declare as follows:

1. I am over the age of 18 years and am fully competent to make this declaration. I make this declaration in support of O2Micro International Limited's ("O2 Micro") Motion for Summary Judgment. I make the following statements based on personal knowledge and if called to testify to them could and would do so.
2. I am an Associate with the law firm of Grossman, Tucker, Perreault & Pfleger, PLLC of 55 S. Commercial Street, Manchester, New Hampshire 03101.
3. On July 1, 2013 I accessed the internet using the "Mozilla Firefox" browser and entered the URL <http://www.sgi.com/products/legacy/> and printed a copy of the web site page accessed thereby.

4. Attached hereto as Exhibit A is a true and correct copy of the web site page accessed on the internet by the URL <http://www.sgi.com/products/legacy/>.
5. I also accessed the internet using the “Mozilla Firefox” browser and entered the URL <http://archive.org/web/web.php>, a service known as the Way Back Machine, which allows internet users to browse through archived copies of web pages.
6. Using the Way Back Machine service, I browsed archived web pages of the address <http://www.sgi.com/products/legacy/> on the dates August 12, 2004; November 11, 2005; June 15, 2006; August 9, 2007; October 3, 2007; and November 10, 2007.
7. Attached hereto as Exhibit B are true and correct copies of the archived web pages listing Respondent’s “Legacy Products” at those dates in time. On each of these dates, “O2” was listed as a discontinued product no longer sold or manufactured.
8. Also using the Way Back Machine service, I browsed archived web pages of the address [http://www.sgi.com/site\\_contents.html](http://www.sgi.com/site_contents.html), listing its current Products, on the dates August 13, 2002, October 13, 2002 and July 14, 2003.
9. Attached hereto as Exhibit C are true and correct copies of the archived web pages listing Respondent’s “Products” at those dates in time. On August 13, 2002, “O2” was listed as a current product. On October 13, 2002, it no longer appeared among current product. On July 15, 2003 and all future dates “O2” remained not listed among current products. “O2” appeared listed as a retired “Legacy Product” on or around August 12, 2004, as mentioned above in Paragraph 6.

10. I have reviewed the websites show in Exhibits A through C and have found nothing to indicate or suggest the “O2” branded products or services were offered for sale in the United States after the date of October 13, 2002.

I declare under penalty of perjury of the laws of the United States of America that the foregoing statements are true and correct to the best of my knowledge.

Executed on July 2, 2013.

  
\_\_\_\_\_  
Alex P. Garens

# EXHIBIT A

## Legacy Products

[Intel Based Systems](#)

[MIPS Based Systems](#)

[Displays](#)

## Legacy Products

Here you will find information for products that are no longer manufactured or sold by SGI. For information on current SGI products, please visit the [Products](#) section. Non-current products may be available through the [Remarketed Products Group](#).

### Intel® Based Systems

- Silicon Graphics® 320
- Silicon Graphics® 540
- Silicon Graphics® 230
- Silicon Graphics® 330
- Silicon Graphics® 550
- Silicon Graphics® 750
- Silicon Graphics Zx10™
- Silicon Graphics Zx10™ VE
- SGI Zx10™ Server
- SGI® 1100
- SGI® 1200
- SGI® 1400
- SGI® 1450
- SGI Graphics Cluster™
- Silicon Graphics Prism® Deskside

### MIPS® Based Systems

- IRIS Indigo®
- Indy®
- Indigo2™
- Indigo2 Impact™
- Challenge®
- Silicon Graphics® O2®
- Silicon Graphics® O2+™
- Silicon Graphics® Octane®
- Silicon Graphics® Octane2™
- Silicon Graphics® Onyx®
- Silicon Graphics® Onyx2®
- SGI® Onyx® 300
- SGI® Origin 200®
- SGI® Origin® 2000
- SGI® Origin® 300

### Displays

- Silicon Graphics® 1600SW
- Silicon Graphics MultiLink™ Adapter

# EXHIBIT B





United States

HOW TO BUY | RESELLERS | COMPANY INFO | CAREERS

SEARCH HOME

products

industries

developers

services & support

serious fun

## products

### Legacy Products

Here you will find information and support related links for products that are no longer manufactured or sold by SGI. For information on current hardware and software from SGI, visit the [Products](#) site.

Select one of the following legacy product categories for more information:



#### Intel® Based Systems

- Silicon Graphics® 230
- Silicon Graphics® 330
- Silicon Graphics® 550
- Silicon Graphics® 750
- Silicon Graphics Zx10™
- Silicon Graphics Zx10™ VE
- SGI Internet Server™
- SGI Zx10™ Server
- Silicon Graphics® 320
- Silicon Graphics® 540
- SGI® 1100
- SGI® 1200
- SGI® 1400
- SGI® 1450
- SGI Internet Server™ for E-commerce
- SGI Internet Server™ for Messaging



#### MIPS® Based Systems

- Challenge®
- Indigo2 Impact™ 10000
- Indy®
- IRIS Indigo®
- Silicon Graphics® O2®
- Silicon Graphics® Onyx®



#### Displays

- Silicon Graphics® 1600SW
- Silicon Graphics MultiLink™ Adapter
- Silicon Graphics® F180



#### Vizualization Systems

- SGI® Reality Center® 3300W
- SGI Graphics Cluster™

Need support  
for a legacy product?



#### Online Support

Information on available support online

#### Supportfolio

Supportfolio, the premier online customer support from SGI, features patches, technical support, and service-call logging and tracking.

#### Technical Publications Library

Documentation on hardware and all operating systems supported by SGI.

#### Visualization Anywhere







↑ Products & Services

↓ Legacy Products

Intel Based Systems

MIPS Based Systems

Displays

Visualization Systems

## Legacy Products

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### Intel® Based Systems

- Silicon Graphics® 230
- Silicon Graphics® 320
- Silicon Graphics® 330
- Silicon Graphics® 540
- Silicon Graphics® 550
- Silicon Graphics® 750
- Silicon Graphics Zx10™
- Silicon Graphics Zx10™ VE
- SGI® 1100
- SGI® 1200
- SGI® 1400
- SGI® 1450
- SGI Zx10™ Server
- SGI Internet Server™
- SGI Internet Server™ for E-commerce
- SGI Internet Server™ for Messaging



### MIPS® Based Systems

- Challenge®
- Indigo2 Impact™ 10000
- Indy®
- IRIS Indigo®
- Silicon Graphics® O2®
- Silicon Graphics® Onyx®



### Displays

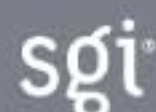
- Silicon Graphics® 1600SW
- Silicon Graphics MultiLink™ Adapter
- Silicon Graphics® F180
- Silicon Graphics® F220



### Vizualization Systems

- SGI® Reality Center® 3300W
- SGI Graphics Cluster™





United States

HOW TO BUY | RESELLERS | COMPANY INFO | CAREERS

SEARCH HOME

products

industries

developers

services & support

serious fun

## products

### Legacy Products

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Select one of the following legacy product categories for more information:



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- Silicon Graphics® 750
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- Silicon Graphics Zx10™ VE
- SGI Internet Server™
- SGI Zx10™ Server
- Silicon Graphics® 320
- Silicon Graphics® 540
- SGI® 1100
- SGI® 1200
- SGI® 1400
- SGI® 1450
- SGI Internet Server™ for E-commerce
- SGI Internet Server™ for Messaging



#### MIPS® Based Systems

- Challenge®
- Indigo2 Impact™ 10000
- Indy®
- IRIS Indigo®
- Silicon Graphics® O2®
- Silicon Graphics® Onyx®



#### Displays

- Silicon Graphics® 1600SW
- Silicon Graphics MultiLink™ Adapter
- Silicon Graphics® F180



#### Vizualization Systems

- SGI® Reality Center® 3300W
- SGI Graphics Cluster™

Need support for a legacy product?

#### Online Support

Information on available support online

#### Supportfolio

Supportfolio, the premier online customer support from SGI, features patches, technical support, and service-call logging and tracking.

#### Technical Publications Library

Documentation on hardware and all operating systems supported by SGI.

#### Visualization Anywhere







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Support information for legacy products can be found in the [Support and Downloads](#) section. Additional documentation can be found in the [Technical Publications](#) library.

### Intel® Based Systems

- Silicon Graphics® 320
- Silicon Graphics® 540
- Silicon Graphics® 230
- Silicon Graphics® 330
- Silicon Graphics® 550
- Silicon Graphics® 750
- Silicon Graphics Zx10™
- Silicon Graphics Zx10™ VE
- SGI Zx10™ Server
- SGI® 1100
- SGI® 1200
- SGI® 1400
- SGI® 1450
- SGI Graphics Cluster™
- Silicon Graphics Prism® Deskside

### MIPS® Based Systems

- IRIS Indigo®
- Indy®
- Indigo2™
- Indigo2 Impact™
- Challenge®
- Silicon Graphics® O2®
- Silicon Graphics® O2+™
- Silicon Graphics® Octane®
- Silicon Graphics® Octane2™
- Silicon Graphics® Onyx®
- Silicon Graphics® Onyx2®
- SGI® Onyx® 300
- SGI® Origin 200®
- SGI® Origin® 2000
- SGI® Origin® 300

### Displays

- Silicon Graphics® 1600SW
- Silicon Graphics MultiLink™ Adapter
- Silicon Graphics® F180
- Silicon Graphics® F181
- Silicon Graphics® F190
- Silicon Graphics® F220
- Silicon Graphics® F230
- SGI® Reality Center® 3300W



## Legacy Products

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### Intel® Based Systems

- Silicon Graphics® 320
- Silicon Graphics® 540
- Silicon Graphics® 230
- Silicon Graphics® 330
- Silicon Graphics® 550
- Silicon Graphics® 750
- Silicon Graphics Zx10™
- Silicon Graphics Zx10™ VE
- SGI Zx10™ Server
- SGI® 1100
- SGI® 1200
- SGI® 1400
- SGI® 1450
- SGI Graphics Cluster™
- Silicon Graphics Prism® Deskside

### MIPS® Based Systems

- IRIS Indigo®
- Indy®
- Indigo2™
- Indigo2 Impact™
- Challenge®
- Silicon Graphics® O2®
- Silicon Graphics® O2+™
- Silicon Graphics® Octane®
- Silicon Graphics® Octane2™
- Silicon Graphics® Onyx®
- Silicon Graphics® Onyx2®
- SGI® Onyx® 300
- SGI® Origin 200®
- SGI® Origin® 2000
- SGI® Origin® 300

### Displays

- Silicon Graphics® 1600SW
- Silicon Graphics MultiLink™ Adapter
- Silicon Graphics® F180
- Silicon Graphics® F181
- Silicon Graphics® F190
- Silicon Graphics® F220
- Silicon Graphics® F230
- SGI® Reality Center® 3300W





## Legacy Products

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### Intel® Based Systems

- Silicon Graphics® 320
- Silicon Graphics® 540
- Silicon Graphics® 230
- Silicon Graphics® 330
- Silicon Graphics® 550
- Silicon Graphics® 750
- Silicon Graphics Zx10™
- Silicon Graphics Zx10™ VE
- SGI Zx10™ Server
- SGI® 1100
- SGI® 1200
- SGI® 1400
- SGI® 1450
- SGI Graphics Cluster™
- Silicon Graphics Prism® Deskside

### MIPS® Based Systems

- IRIS Indigo®
- Indy®
- Indigo2™
- Indigo2 Impact™
- Challenge®
- Silicon Graphics® O2®
- Silicon Graphics® O2+™
- Silicon Graphics® Octane®
- Silicon Graphics® Octane2™
- Silicon Graphics® Onyx®
- Silicon Graphics® Onyx2®
- SGI® Onyx® 300
- SGI® Origin 200®
- SGI® Origin® 2000
- SGI® Origin® 300

### Displays

- Silicon Graphics® 1600SW
- Silicon Graphics MultiLink™ Adapter
- Silicon Graphics® F180
- Silicon Graphics® F181
- Silicon Graphics® F190
- Silicon Graphics® F220
- Silicon Graphics® F230
- SGI® Reality Center® 3300W

# EXHIBIT C

<b>Products</b>	
<a href="#">Hardware</a>	<a href="#">TOP</a>
<b><a href="#">Servers</a></b>	<b><a href="#">Visualization Systems</a></b>
<div>Integrated Server Solutions<ul style="list-style-type: none"><li><a href="#">SGI Media Servers™</a></li></ul>MIPS® and IRIX® <a href="#">SGI® Origin® Family of Servers</a><ul style="list-style-type: none"><li><a href="#">SGI® Origin® 300</a></li><li><a href="#">SGI® Origin® 3000 Series</a></li></ul></div>	<div><a href="#">Visual Area Networking</a> <a href="#">SGI® Onyx® 300 with InfiniteReality Family Graphics</a> <a href="#">SGI® Onyx® 3000 Series</a><ul style="list-style-type: none"><li><a href="#">SGI® Onyx® 3000 Series with InfiniteReality Family Graphics</a></li><li><a href="#">SGI® Onyx® 3000 Series with InfinitePerformance Graphics</a></li></ul><a href="#">SGI® Reality Center™</a></div>
<b><a href="#">Workstations</a></b>	<b><a href="#">Peripherals</a></b>
<div><a href="#">Silicon Graphics® 02+™</a> <a href="#">Silicon Graphics® 02®</a> <a href="#">Silicon Graphics Fuel™</a> <a href="#">Silicon Graphics® Octane2™</a></div>	<div><a href="#">Displays</a> <a href="#">Workstation Peripherals</a> <a href="#">Networking</a> <a href="#">Ethernet Serial Port</a> <a href="#">Digital Media</a></div>
<b><a href="#">Remanufactured Products</a></b>	<b><a href="#">Storage</a></b>
<div><a href="#">Recertified Products</a></div>	<div><a href="#">SGI® TP900</a> <a href="#">SGI® TP9100</a> <a href="#">SGI® TP9400</a> <a href="#">SGI SAN Server™ 1000</a> <a href="#">SGI® File Server</a> <a href="#">SGI® File Server</a></div>



Products

<a href="#">Hardware</a> <a href="#">TOP</a>	
<a href="#">Servers</a> <div>Integrated Server Solutions<ul style="list-style-type: none"><li><a href="#">SGI Media Servers™</a></li></ul>MIPS® and IRIX® <a href="#">SGI® Origin® Family of Servers</a><ul style="list-style-type: none"><li><a href="#">SGI® Origin® 300</a></li><li><a href="#">SGI® Origin® 3000 Series</a></li></ul></div>	<a href="#">Visualization Systems</a> <div>Visual Area Networking <a href="#">SGI® Onyx® 300 with InfiniteReality Family Graphics</a> <a href="#">SGI® Onyx® 3000 Series</a><ul style="list-style-type: none"><li><a href="#">SGI® Onyx® 3000 Series with InfiniteReality Family Graphics</a></li><li><a href="#">SGI® Onyx® 3000 Series with InfinitePerformance Graphics</a></li></ul><a href="#">SGI® Reality Center™</a></div>
<a href="#">Workstations</a> <div><a href="#">Silicon Graphics Fuel™</a> <a href="#">Silicon Graphics® Octane2™</a></div>	<a href="#">Peripherals</a> <div><a href="#">Displays</a> <a href="#">Workstation Peripherals</a> <a href="#">Networking</a> <a href="#">Ethernet Serial Port</a> <a href="#">Digital Media</a></div>
<a href="#">Remarketed Products</a> <div><a href="#">Recertified Products</a></div>	<a href="#">Storage</a> <div><a href="#">SGI® TP900</a> <a href="#">SGI® TP9100</a> <a href="#">SGI® TP9400</a> <a href="#">SGI SAN Server™ 1000</a> <a href="#">SGI® File Server</a> <a href="#">SGI® File Server</a></div>

<a href="#">Events</a>	
<a href="#">Products</a> <a href="#">TOP</a>	
<a href="#">Servers and Supercomputers</a>  MIPS® and IRIX® <a href="#">SGI® Origin® Family of Servers</a> <ul style="list-style-type: none"><li><a href="#">SGI® Origin® 300</a></li><li><a href="#">SGI® Origin® 350</a></li><li><a href="#">SGI® Origin® 3000 Series</a></li></ul> Intel® Itanium® 2 and Linux® <a href="#">SGI® Altix™ 3000 Family</a>  Integrated Server Solutions <ul style="list-style-type: none"><li><a href="#">SGI Media Servers™</a></li></ul>	<a href="#">Visualization Systems</a>  <a href="#">Visual Area Networking</a> <a href="#">SGI® Reality Center®</a> <a href="#">Silicon Graphics® Onyx4™</a> <a href="#">UltimateVision™ Family</a> <a href="#">InfiniteReality4™ Graphics</a> <a href="#">InfinitePerformance™ Graphics</a> <a href="#">SGI® Onyx® 350 Systems</a> <a href="#">SGI® Onyx® 3000 Series</a>
<a href="#">Workstations</a>  <a href="#">Silicon Graphics Fuel™</a> <a href="#">Silicon Graphics® Octane2™</a> <a href="#">Silicon Graphics® Tezro™</a>	<a href="#">Peripherals</a>  <a href="#">Displays</a> <a href="#">Workstation Peripherals</a> <a href="#">Networking</a> <a href="#">Ethernet Serial Port</a> <a href="#">Digital Media</a>
<a href="#">Remarketed Products</a>  <a href="#">Recertified Products</a> <ul style="list-style-type: none"><li><a href="#">Inventory</a></li><li><a href="#">Warehouse Clearance</a></li></ul> <a href="#">Remanufactured Products</a> <ul style="list-style-type: none"><li><a href="#">Weekly Specials</a></li></ul>	<a href="#">Storage</a>  <a href="#">SGI® TP900</a> <a href="#">SGI® TP9100</a> <a href="#">SGI® TP9400</a> <a href="#">SGI® TP9500</a> <a href="#">SGI® TP9500</a> <a href="#">TM 1000</a>